

Plaintiff's Exhibit F

Plaintiff's Emails to Defendants

Re: Defendants' Request for a Blanket "Confidential"
Designation

From: Birenboim, Bruce <bbirenboim@paulweiss.com>
Sent: Monday, September 14, 2020, 2:58 PM
To: Buerger, Susanna M; David Jeffries
Cc: Doran, Marissa; King, Phoebe H; Johnson, Jeh C
Subject: RE: Discovery Issue

David,

Let me just second what Susanna said and try to be perfectly clear about our position so that there is no confusion before the Court:

Our interrogatory responses and objections are fully prepared and ready to serve, as we agreed we would do last Thursday evening. But we cannot serve our responses in the absence of an agreed upon protective order.

In order to prevent any delay in your receiving our responses, we are willing to treat the Court's model protective order as applying to the interrogatory responses that we are prepared to serve today if you will so agree. If you will not agree to the model order applying in this instance, we have no choice but to hold our interrogatory responses in abeyance until this matter is

resolved by the Court. In that event, we ask that you respond to the draft letter we sent you last week teeing this issue up for the Court so that we may present this issue to the Court promptly.

Our position will prevent any delay in the service of our interrogatory responses, and will fully protect your client's rights to object to any of our confidentiality designations, as expressly provided for in the model protective order.

Please let us know immediately if you agree to treating our interrogatory responses and objections under the terms of the model protective order or not so that we may determine whether we may serve them this evening.

Thank you.

Bruce

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From: Buergel, Susanna M <sbuergel@paulweiss.com>
Sent: Monday, September 14, 2020 5:24 PM
To: David Jeffries <djeffries@jeffrieslaw.nyc>
Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H <pkking@paulweiss.com>; Johnson, Jeh C <jjohnson@paulweiss.com>
Subject: RE: Discovery Issue

David,

Just so we are all on the same page: we are prepared to provide all defendants' interrogatory responses if you are willing to treat those responses as Confidential under the Court's model protective order. Of course, you and your client retain the ability to challenge that designation. (And, of course, if the model protective order had been entered already, we would simply designate our responses as Confidential and your remedy, in the ordinary course, if you objected, would be to challenge that designation.) If you are unwilling to agree, we will not be in a position to serve our responses tonight. Rather, we will tee this issue up for the court in an additional dispute letter. Either way, please let us know as soon as you can how you would like to proceed.

Many thanks,

Susanna

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From: David Jeffries <djeffries@jeffrieslaw.nyc>
Sent: Monday, September 14, 2020 4:23 PM
To: Buergel, Susanna M <sbuergel@paulweiss.com>
Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H <pkking@paulweiss.com>; Johnson, Jeh C <jjohnson@paulweiss.com>
Subject: Re: Discovery Issue

Susanna,

If your position is that applicable rules and case law requires that defendants' responses receive confidentiality treatment as defined in the model protective order, please point us to the relevant rules and caselaw. If your position is that you want Plaintiff to agree to categorically treat all of defendants' responses as confidential as defined in the model protective order, Plaintiff's position is that such an approach is adverse to his interests and the claims in this action. Based on our understanding Defendants have asked Plaintiff to treat all of Defendants' responses as confidential as defined in the protective order. Plaintiff does not agree to Defendants' request. We are happy to meet and confer on this issue and we are happy to allow Defendants' to revise their joint letter to account for this issue

Regards,

David

From: Buergel, Susanna M <sbuergel@paulweiss.com>
Sent: Monday, September 14, 2020 3:56 PM
To: David Jeffries <djeffries@jeffrieslaw.nyc>

Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H <pkking@paulweiss.com>; Johnson, Jeh C <jjohnson@paulweiss.com>

Subject: RE: Discovery Issue

David,

I am happy to discuss the issues you raise below at our mutual convenience. We just need an answer for today: will you treat our responses as Confidential under the Court's model protective order? If not, we will need to tee the issue up for the court.

Thanks,

Susanna

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From: David Jeffries <djeffries@jeffrieslaw.nyc>

Date: Monday, Sep 14, 2020, 3:49 PM

To: Buerger, Susanna M <sbuerger@paulweiss.com>

Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>, Doran, Marissa <mdoran@paulweiss.com>, King, Phoebe H <pkking@paulweiss.com>, Johnson, Jeh C <jjohnson@paulweiss.com>

Subject: Re: Discovery Issue

Hello Susanna,

It is not accurate to claim that Defendants and Plaintiff have made the same request, for the same reason or in the same way. This is a case where Plaintiff has alleged retaliation that Plaintiff believes was planned, executed, and then covered up, including by means of manipulating documents. This is also a case where Plaintiff has alleged that Defendants' have made public statements about Plaintiff that Defendants know are false. As a result of Defendants' actions, and to limit further retaliation against Plaintiff or any non-party third parties referenced in his Rog Responses, Plaintiff indicated that his responses shall be "subject to and protected by the Confidentiality Stipulation and Order ultimate entered in this case." Plaintiff made Defendants aware of his position on July 18, 2020—almost two months ago. The parties have had numerous email exchanges and meet and confers and yet, Defendants did not mention this issue, let alone Plaintiff's position on this issue, until September 10, 2020—the day that Defendants rog responses and rfp responses were due.

To the extent there was a misinterpretation on Defendants' behalf, note that Plaintiff's language in his rog responses was intended to provide guidance on how *Defendants* should govern themselves until a protective order was entered. Now that Defendants' position on this issue has been communicated to Plaintiff and it is clear that Defendant's positions is fundamentally different than Plaintiff's position, if necessary, Plaintiff is willing to revise his rog responses to make it clear that he is not designating his entire rog responses as confidential and/or governed by any subsequent

protective order entered in this case. This outcome would ensure that Plaintiff's responses and obligations are governed by what is effectively the default position.

I am available to discuss this matter throughout the rest of today or tomorrow.

Kind regards,

David

From: Buergel, Susanna M <sbuergel@paulweiss.com>
Sent: Monday, September 14, 2020 9:03 AM
To: David Jeffries <djeffries@jeffrieslaw.nyc>
Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H <pkking@paulweiss.com>; Johnson, Jeh C <jjohnson@paulweiss.com>
Subject: RE: Discovery Issue

David, one further note on this: in your responses to our interrogatories, you similarly indicated that the responses should be treated as confidential subject to any PO ultimately entered in the matter. We are asking for similar treatment. The model PO (and any PO that ultimately is entered) has provisions for challenging the Confidential designation that both parties can use, if necessary. As Confidential discovery material, of course, your client is free to review the interrogatory responses; we are not requesting any sort of treatment that would restrict Mr. Cardwell's review of our responses. Many thanks.

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From: David Jeffries <djeffries@jeffrieslaw.nyc>
Sent: Sunday, September 13, 2020 9:49 PM
To: Buergel, Susanna M <sbuergel@paulweiss.com>
Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H <pkking@paulweiss.com>; Johnson, Jeh C <jjohnson@paulweiss.com>
Subject: Re: Discovery Issue

Hi Susanna,

In our September 10th email, Plaintiff provided confirmation that documents produced in response to Plaintiff's First Set of RFPs will be governed by the model protective order.

Regarding Defendants' interrogatory responses and responses to Plaintiff's RFPs, we would like to better understand the basis for Defendants' requested confirmation that such responses will also be governed by the model protective order--particularly when Defendants are serving their responses on Plaintiff and not filing them on the docket (and such discovery is otherwise not covered by the model protective order).

Are there any cases or authorities that supports your request?

Thanks in advance for providing clarification.

Regards,

David

From: Buergel, Susanna M <sbuergel@paulweiss.com>
Sent: Sunday, September 13, 2020 2:59 PM
To: David Jeffries <djeffries@jeffrieslaw.nyc>
Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H <pkking@paulweiss.com>; Johnson, Jeh C <jjohnson@paulweiss.com>
Subject: RE: Discovery Issue

Thanks David, Wednesday is fine, although we are not sure that any review of our responses is relevant for this letter, which is focused on the issues we have identified with plaintiff's production and discovery responses that the parties were unable to resolve through the meet and confer process. To the extent you have issues and questions regarding our discovery responses, we are of course happy to begin the meet and confer process at your convenience to try to address those issues. Many thanks, we look forward to receiving your insert by Wednesday.

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From: David Jeffries <djeffries@jeffrieslaw.nyc>
Sent: Friday, September 11, 2020 5:18 PM
To: Buergel, Susanna M <sbuergel@paulweiss.com>
Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H

<pking@paulweiss.com>; Johnson, Jeh C <jjohnson@paulweiss.com>

Subject: Re: Discovery Issue

Hello Susanna,

Quick follow-up. As discussed below, we would like to submit our insert next week--with Wednesday as the target date. Relatedly, this timing would better allow us to do an initial review of Defendants' production and Rog responses.

We look forward to receiving Defendants' Rog responses on Monday.

Have a good weekend.

Kind regards,

David

From: Buerger, Susanna M <sbuerger@paulweiss.com>

Sent: Thursday, September 10, 2020 3:45 PM

To: David Jeffries <djeffries@jeffrieslaw.nyc>

Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H <pking@paulweiss.com>; Johnson, Jeh C <jjohnson@paulweiss.com>

Subject: RE: Discovery Issue

Thank you for the confirmation, David. We will proceed on the basis that any documents we produce today (and going forward, until the protective order issue is resolved) will be treated as Confidential under the court's model protective order by you and Mr. Caldwell. In addition, we request your confirmation that you will also treat the interrogatory responses and the responses to the requests production as Confidential as well, under the model protective order.

We do not plan on responding to your letter otherwise; we sent you a draft joint discovery dispute letter at the beginning of the week; it tees up the protective order issue. We would like to submit that to the court at your earliest convenience.

Many thanks,

Susanna

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From: David Jeffries <djeffries@jeffrieslaw.nyc>

Date: Thursday, Sep 10, 2020, 11:32 AM

To: Buerger, Susanna M <sbuerger@paulweiss.com>

Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>, Doran, Marissa <mdoran@paulweiss.com>, King, Phoebe H <pking@paulweiss.com>

Subject: Re: Discovery Issue

Hello Susanna, attached is our response to your September 9th emails regarding the protective order. As outlined in our letter, Plaintiff agrees to treat as Confidential any documents received by Defendants in accordance with the Court's model protective order.

Regards,

David

From: Buerger, Susanna M <sbuerger@paulweiss.com>
Sent: Wednesday, September 9, 2020 8:20 PM
To: David Jeffries <djeffries@jeffrieslaw.nyc>
Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>; Doran, Marissa <mdoran@paulweiss.com>; King, Phoebe H <pking@paulweiss.com>
Subject: RE: Discovery Issue

Great, thanks David.

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From: David Jeffries <djeffries@jeffrieslaw.nyc>

Date: Wednesday, Sep 09, 2020, 8:19 PM

To: Buerger, Susanna M <sbuerger@paulweiss.com>

Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>, Doran, Marissa <mdoran@paulweiss.com>, King, Phoebe H <pking@paulweiss.com>

Subject: Re: Discovery Issue

Hello Susanna,

I am confirming receipt of your emails. I am circling back to Mr. Cardwell. We will send our response tomorrow morning.

Kind regards,

David

From: Buerger, Susanna M <sbuerger@paulweiss.com>
Sent: Wednesday, September 9, 2020, 7:41 PM
To: David Jeffries
Cc: Birenboim, Bruce; Doran, Marissa; King, Phoebe H
Subject: RE: Discovery Issue

David,

Can you please confirm your agreement to the request below? We will be unable to make an initial production without your written confirmation that you will treat any documents we produce as Confidential within the definition provided for in the court's model order. Given that you have proposed entry of the model order with basically no revisions, we would hope that this is a non-controversial request.

Thanks,

Susanna

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From: Buerger, Susanna M <sbuerger@paulweiss.com>

Date: Wednesday, Sep 09, 2020, 7:16 AM

To: David Jeffries <djeffries@jeffrieslaw.nyc>

Cc: Birenboim, Bruce <bbirenboim@paulweiss.com>, Doran, Marissa <mdoran@paulweiss.com>, King, Phoebe H <pking@paulweiss.com>

Subject: Discovery Issue

David,

We plan to make a first production of documents when we serve our objections and responses to your discovery requests tomorrow. Please confirm, by a return email, that you agree to treat those documents as Confidential, consistent with the Court's model protective order, pending resolution of our dispute regarding the protective order. We will mark the documents Confidential (and do not intend to change their designation to a different category even if the Court grants our request for two additional protective order categories). Many thanks,

Susanna

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